Supreme Court, U.S.
FILED

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IN THE
Supreme Court of the United States

YOUNG J. PARK
Petitioner

v.

THE STATE BAR OF CALIFORNIA, a California Corp.;
JEROME SIDNEY BRAUN;
And DOES 1-20, inclusive,
Respondents

On Petition For Writ Of Certiorari
To The California Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Can any powerful state officials have the rights to tromp or stomp the express provisions of criminal and civil federal statutes, U.S. Supreme Court precedents or U.S. Constitution within its boundaries when the Supremacy clause states otherwise?

2. Can California request state court to regulatorily take citizens' property to prevent citizens from disclosing California's violations of federal laws?

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WHY REVIEW SHOULD BE GRANTED

The *Lopez* court noted:

> [R]efusing to obey the decisional law . . . is akin to the repudiated pre-Civil War doctrine of nullification whereby rebellious states refused to recognize certain federal laws within their boundaries. . . . The government expects its citizens to abide by the law-no less is expected of those charged with the duty to faithfully administer the law.

Lopez v. Heckler, 713 F.2d at 1441 (1983)

In *Lopez*, state officials had tromped or stomped the federal decisional law. Unless the court had heard the case, the court might not have known of state officials' tromping of the federal law within its boundaries.

In the present case, state officials have tromped federal laws, including U.S. Supreme Court precedent, even further. In addition, state decisions show the state's intention to take personal property away against the express provisions of the statute when citizens assert their federal rights. It is a regulatory taking in violation of the Taking Clause of the Fifth Amendment to the U. S. Constitution.

Here, the California State Bar ("California") admitted that it had violated the criminal and civil federal statutes and U.S. Constitution. Thereafter, California prevented or influenced state courts from complying with the express provisions of the statutes, U.S. Supreme Court precedents and U.S. Constitution as explained below.

Many legal commentators and state justices commented that the "supreme court apparently agreed with opinion because a petition for review was denied." [Appendix pp. 1-2] Thus, this court's review is important. Once California's violations of federal laws are *tacitly approved* by denying a petition for certiorari, other 49

state bars also have the equal right to violate the federal laws within their boundaries under the Equal Protection Clause. Then, "Principles of federalism, as well as the Supremacy Clause" will collapse. [*Felder v. Casey*, 487 US 131, 134, 108 S.Ct. at 2314 (1988)]

STATEMENT OF JURISDICTION

This court has both federal question and appellate jurisdiction after the California Supreme Court denied Petition to review on 3/3/04. [Appendix C][1/]

STATEMENT OF FACTS

1. Petitioner had complained California's non-compliance with the laws. During the deposition, California admitted that California was familiar with the law [Appendix p. 3:21-25] but had not obeyed the State Bar Act. [Appendix pp. 4:25-5:6]

2. Petitioner complained of California's illegal conducts to the committee only. However, California's accommodation department joined and conspired with the California's committee to injure Petitioner against 18 U.S.C. §241. California testified that California had not received Petitioner's accommodation requests [Appendix pp. 6:10-15, 7:8-11] and could not provide the same accommodation that had been provided to a hand-injured disabled Petitioner.

3. However, California's own Bates stamp numbers showed that California had received Petitioner's accommodation requests [Appendix pp. 8-10] at least three times but simply ignored them.

4. Without the same accommodations provided before, a disabled Petitioner cannot re-take the bar examination. Therefore, the conspiracy between the accommodation department and the committee violated Title II of Americans with Disabilities Act

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[1/] According to the guide, Appendix A Decision of State Court of Appeal; Appendix B Decision of State Trial Court; Appendix C Decision of State Supreme Court Denying Review

("ADA"), federal Civil Rights Act [42 U.S.C. §§1981-1983, 1985,1986] and equal right to take the examination under the Equal Protection Clause.

5. After a civil suit had been filed against California, Petitioner confronted California's continuous harassment and abuses of the discovery process that will be shown later.

6. The evidences, in the appendix, show California and state courts have past, present and future conflicts of interest that prevent state courts from protecting federal or constitutional rights against California. [Appendix p. 167]

STATEMENT OF THE CASE

Petitioner sued California for (1) violation of the State Bar Acts, (2) Fraud, (3) Negligent Misrepresentation, (4) Negligence, (5) Injunction, (6) Violation of Public Policy under the due process and equal protection clauses of Amendments V and XIV. [Appellant's Appendix ("AA")[2/] p. 2] During the discovery process, (7) violation of Title II of ADA and (8) Civil Right Act violations were found and added to the first amended complaint. [AA pp. 1274-1276]

Superior court granted California's motion for summary judgment based on California Tort Claims Act although this case is exempt from the filing procedures because of the Supremacy Clause (Art. VI, cl. 2) and the Federal Civil Rights Act issues. [Appendix B]

Court of Appeal opinion affirmed the lower court judgment by simply ignoring U.S. Supreme Court adverse precedent cited in Petitioner's briefs. [Appendix A]

California Supreme Court denied petition for review.

[2/] Original Appellant's Appendixes locate at the state court.

SUMMARY OF ARGUMENT

California's conducts were against the federal criminal statute. California prevented state judges from performing the judicial duties as explained below. The grounds of Principles of federalism will be destroyed when other 49 states equally violate the federal laws under the Equal Protection Clause. Therefore, state court decisions should be reversed.

STANDARD OF REVIEW

I. LEGAL STANDARDS APPLICABLE TO DETERMINE WHO HAS TO ABIDE BY THE FEDERAL LAWS

Under U.S. Const. Amendment V and XIV, the laws are equally applicable to normal citizens and powerful officials. When the government expects its citizens to abide by the federal laws, no less is expected from powerful state officials.

Under the Supremacy clause, state Tort Claims filing requirements cannot defeat a claim arising under federal law. [*Felder v. Casey*, 487 US 131, 134, 108 S.Ct. 2302, 2304-2305 (1988)] Furthermore, it is not permitted to invoke state Tort Claims Act to protect California's crimes against 18 U.S.C. §241.

II. STANDARD OF REVIEW FOR REGULATORY TAKING IN VIOLATION OF THE TAKINGS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

When California Supreme court denied Petitioner's Petition, the court of appeal opinion becomes decisional law because justices commented that California "supreme court apparently agreed with opinion because a petition for review was denied." [*Estate of Wathen* (1997) 56 CA4th 48, 53, 64 CR2d 805, 808, fn.5; See Appendix p. 2] Petitioner must comply with the law.

When this decisional law takes away a citizen's property against the express contents of statutes to regulate the suits against California's federal crimes, it is a regulatory taking. The standard

of review is whether it "substantially advance" a legitimate state interest. [*Chevron USA, Inc v. Cayetano*, 224 F.3d 1030, 1033 (9th Cir. 2000), *cert. denied*, 532 U.S. 942 (2001)] Thus, it is an unconstitutional regulatory taking, where this law simply forces citizens to close their eyes whenever they see California's federal law violations.

ARGUMENT

When California admitted its violations of both criminal and civil federal statute, the review of this court is important. Many legal commentators and state justices commented that "supreme court apparently agreed with opinion because a petition for review was denied." [Appendix pp. 1-2] The review of this court is more important when the state court opinion is against the express provisions of U.S. Supreme precedents, U.S. Constitution and statutes. Therefore, *tacit approval* of this court may allow all 50 state bar officials to stomp the federal laws within their boundaries under the Equal Protection clause.

I. CAN ANY POWERFUL STATE OFFICIALS HAVE THE RIGHT TO TROMP OR STOMP THE EXPRESS PROVISIONS OF CRIMINAL AND CIVIL FEDERAL STATUTES, U.S. SUPREME COURT PRECEDENTS OR U.S. CONSTITUTION WITHIN ITS BOUNDARIES WHEN THE SUPREMACY CLAUSE STATES OTHERWISE?

A. State Law Cannot Stomp Federal Law

Claims filing requirements of state law cannot defeat a claim arising under federal law. [The Supremacy Clause and *Felder v. Casey*, 487 US 131, 134, 108 S.Ct. 2302, 2304-2305 (1988)]

Petitioner cited U.S. Supreme Court precedent with two adverse California Supreme Court precedents in his briefs. [Appendix p. 137] However, all of them were ignored in the opinion because none of them were discussed. [But the opinion correctly acknowledges "In plaintiff's opposition to the motion he argued that "Legislative intent shows that Defendants' illegal and

fraudulent acts should not be protected with Tort Claim Acts. (Legislative intent in Gov. Code §818.2)"-Appendix p. iii] U.S. Supreme Court precedent is not a worthless decision that is ignored or stomped by lower court.

Therefore, state court's summary judgment ruling based on state Tort Claims law is stomping federal laws and the Supremacy Clause when there is California's federal crime.

B. Whether Petitioner Has a Right To File The First Amended Complaint When California's Federal Crime and Civil Rights Act Violations Have Been Found During The Discovery Process

> 42 U.S.C. §1985, Note 51 states "Inadequacies in drafting civil rights complaint . . . were not type of defects in pleading that could have been cured by . . . amended complaint. *Hoai v. Vo*, C.A.D.C. 1991, 935 F.2d 308, 290 U.S.App.D.C. 142, rehearing denied, certiorari denied 112 S.Ct. 1578, 503 U.S. 967, 118 L.Ed.2d 220, rehearing denied 112 S.Ct. 2007, 504 U.S. 936, 118 L.Ed.2d 602
>
> [P]ro se litigants not to be denied opportunity to state a civil rights claim because of technicalities and that litigation should be decided on merits where possible. *Kauffman v. Moss*, C.A.3 (Pa.) 1970, 420 F.2d 1270, certiorari denied 91 S.Ct. 93, 400 U.S. 846, 27 L.Ed.2d 84

Therefore, Petitioner has a right to file the first amendment complaint when California's federal crime and Civil Rights Act violations have been found after the filing of the original complaint.

C. Is Petitioner's Nonmonetary Relief Moot?

The case is moot when determination of the legal issues in the suit is no longer necessary. [*DeFunis v. Odegaard*, 416 U.S. 312 (1974)]

However, there are several exceptions. First, an issue will not be treated as moot if it is "capable of repetition, yet evading review." [*Southern Pacific Terminal Co. v. ICC*, 219 U.S. 496 (1911)] Second, if Defendant "voluntarily ceases" the conduct about which Plaintiff is complaining, this will normally not be enough to make the case moot.

First, California admitted parts of evidences were "voluntarily" destroyed during the inspection period. [Appendix pp. 176-179] California admitted parts of evidences are currently kept by the affiliated organization, National Conference of Bar Examiners. [Appendix p. 64] Thus, California's admission is contrary to the opinion because destroying the evidences during the inspection period is not State Bar Policy. (i.e., The opinion incorrectly states "[T]he answer booklets . . . have been destroyed according to State Bar Policy. – Appendix A, p. ii)

Second, California's federal crime against 18 U.S.C. §241 is capable of repetition and is *currently* going on. After Petitioner had complained California's violations of laws, the accommodation department joined and conspired with the committee and refused to provided the accommodation at least three times against Title II of ADA and Civil Rights Act. (supra)

Therefore, state court decisions are contrary to U.S. Supreme Court precedents and mootness does not exist as the opinion states.

D. Can California Prevent or Influence State Court from Performing Duties?

According to Federal statute 42 U.S.C. §1985 (1), California cannot prevent or influence states courts from performing judicial duties. Recently, Californian jury also determined that influencing

the court is a felony under "conspiracy to pervert and obstruct justice." [Appendix p. 180]

California has the power to influence the state courts as explained in Reply to Answer to Petition to California Supreme Court. [Appendix p. 167]

Furthermore, California presented three issues in Answer to Petition to California Supreme Court. Evidences prove that *all* three issues are false. [Appendix pp. 147, 162] The opinion incorrectly states "He argues that his delay in seeking leave to amend is not, in and of itself, grounds for denial of his request for leave to amend." [Appendix A, p. vi] Petitioner said, "Delay, which was caused by [California], alone is not grounds for denial." [Appendix p. 45] These evidences show California has prevented or influence state court from performing duties.

E. Imperative Public Concerns

There are many imperative public concerns where California is violating the laws for the following reasons.

First, Petitioner was diligently looking for a lawyer through www.lawyers.com. However, all lawyers did not want to fight against California because it is a disciplining organization. Furthermore, once the discipline process starts, "Petitioning attorneys must serve three copies of the petition and other pleadings on General Counsel of the state bar at the state bar's San Francisco office." (Eisenberg, Horvitz and Wiener, *Cal Practice Guide: Civil Appeals and Writs* (2002) ¶13:237) Currently, General Counsels are representing California. Thus, few lawyers want to fight against California. Consequently, only Pro Se Plaintiff can disclose California's federal law violations.

Second, all state bars have the equal rights under the due process and equal protection clause. When California has the right to tromp the express provision of federal criminal or civil statutes, all other 49 state bars also have the equal rights to stomp the federal statute

within their boundaries. Therefore, imperative public concerns arise as federalism falls.

II. CAN CALIFORNIA REQUEST STATE COURT TO REGULATORILY TAKE CITIZENS' PROPERTY TO PREVENT CITIZENS FROM DISCLOSING CALIFORNIA'S VIOLATIONS OF FEDERAL LAWS?

Government has the right to take private property for public use, provided that "just compensation" is paid. (Takings Clause of the Fifth Amendment) The standard of review for regulatory taking is whether it "substantially advances" a legitimate state interest. [*Chevron USA, Inc v. Cayetano*, 224 F.3d 1030, 1033 (9th Cir. 2000), *cert. denied*, 532 U.S. 942 (2001)]

Thus, state law cannot take citizens' property away against the express provisions of the statute unless it substantially advances a legitimate interest. [Opinion in Yee v. City of Escondido, 503 U.S. 519 (1992)]

A. California Admitted Its Violation of Laws

First, California has testified that California had not received Petitioner's requests for the accommodation [Appendix pp. 6:10-15, 7:8-11] and thus could not provide the accommodation. However, California's own Bates stamp numbers showed that California had received Petitioner's accommodation requests [Appendix pp. 8-10], at least three times, but did not comply with Title II of ADA [also state Civil Rights Act violation under California Civil Code §51(f)] and thus violated federal Civil Rights Act. [42 U.S.C. §1983] The conspiracy exists. (supra)

Second, California admitted that California was familiar with the law [Appendix p. 3] but had not obeyed the State Bar Act. [Appendix pp. 4-5]

Third, California admitted it had destroyed the disputed examination papers during the inspection period against rule. [Appendix p.176-179]

B. Statute Expressly Prohibits The Recovery of Defense Costs

After the summary judgment ruling was affirmed based on California Tort Claims Act, the opinion states "defendants are entitled to recover costs. (Code Civ. Proc., [CCP] §1032)" [Appendix A, p. ix]

However, CCP §1032 (b) states, "[E]xcept as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs" CCP §1032 (Note 1) also states "The prevailing party is entitled to all of his costs unless another statute provide otherwise". Therefore, state court lacks statutory or inherent authority to require Petitioner to pay defense costs when another statute provides otherwise [CCP §1032(Note 1.3-Authority of court)] because state court also has an obligation to comply with statutes. Here, another statute provide otherwise.

California Civil Procedure §1038 handles any civil proceeding under the California Tort Claims Act. ("Any" means "every" according to Webster's New World dictionary.) Furthermore, moving California "must negate either good faith or reasonable cause" in order to recover defense costs. California admitted its violation of laws. Therefore, state court lacks statutory or inherent authority to require Petitioner to pay defense costs when another statute prohibits California to recover costs.

Therefore, the decisional law, contrary to the express provision of statutes, is an unconstitutional regulatory taking because its purpose is to regulate citizens not to disclose California's federal law violations.

C. Standard of Review under Due Process Clause

Due Process Clause claim under the due process "reasonableness" test is also applicable in this case.

California's accommodation joined and conspired with the commission and refused to provide the legal accommodation

against Title II of ADA and Civil Rights Act. California admitted its violations of laws.

Therefore, awarding the defense costs against the express provisions of statute is unreasonable against Due Process Clause and state officials could not ignore or stomp U.S. Supreme Court precedents and federal statutes.

CONCLUSION

Courage is one human character that is difficult to find from officials. [Benjamin Disraeli-British statesman; prime minister (1868; 1874-80)]

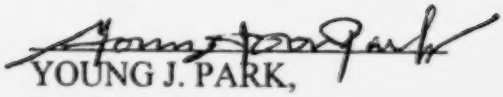
California tested state officials' courage by writing all three false issues in its Answer with a strong word like "never". [Appendix pp. 147, 162] California also tested state official's courage by asking a blank check twice against the express provisions of the statute. [Appendix pp. 29, 31] California could tromp or stomp the express provisions of criminal and civil federal statutes, U.S. Supreme Court precedents or U.S. Constitution within its boundaries. California could even admit its violations of laws because no courageous officials are in front of California.

Lopez case and this case show state officials' tendency to stomp the federal laws unless the courageous federal justices step in and protect them.

Therefore, the petition for a writ of certiorari should be granted and the protection of federal law by this Court is necessary as the *Lopez* court did. Unless, legal commentators and state justices could comment that [U.S.] "supreme court apparently agreed with opinion." [Appendix pp. 1-2] Then, other 49 state bars could violate the federal laws; admit the violations; still win the cases; recover the defense costs against the express provisions of the statute; prevent citizens from asserting their federal rights within their boundaries.

DATED: May 26, 2004

Respectfully Submitted,

BY: 
YOUNG J. PARK,
Pro Se Petitioner

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32 and U.S. Supreme Court rule, the attached brief is 12 page, has a Times New Roman 12-point type is used for the body of the petition and 10-point type is used for footnotes.

DATED this 26th day of May, 2004

BY:
YOUNG J. PARK,
Pro Se Petitioner

STATEMENT OF RELATED CASES

Petitioner is aware of no related case pending before the court.